



Department of the Treasury  
Internal Revenue Service  
Southeast Key District (EP/EO)

Date: JAN 18 2000

Employer Identification Number: [REDACTED]

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

In Reply Refer To: [REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that your organization was formed as a corporation on [REDACTED]. Your current articles of incorporation provide that you are organized to "benefit education, the community, society and humankind by engaging in two primary activities namely an advertising publication and brokerage services of real estate." The organization may also "engage in any other trade or business which can, in the opinion of the Board of Directors, be advantageously carried on in connection with or auxiliary to the foregoing business."

You state in the attachments to Form 1023 that the organization's primary activities are the provision of brokerage services of real property and the distribution of a publication which advertises items being offered for sale by third parties. The purpose of engaging in these activities is to generate income for the acquisition of technology-related hardware and software which will then be donated to the [REDACTED].

The organization's sole sources of income are from real estate brokerage commissions at a rate of [REDACTED] (according to your application, [REDACTED] 7% is the customary rate in your [REDACTED]) and from advertising fees of \$[REDACTED] per advertisement.

The organization's president, [REDACTED], is to receive a salary for the daily running of the organization, you expect to hire [REDACTED] to [REDACTED] part-time employees, and there are expected to be additional real estate salespersons in the future.

The organization is registered with the [REDACTED] as a real estate corporation, and the organization's president is listed as the organization's "[REDACTED]" on the application to participate in the multiple listing service of [REDACTED].

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations defines a private shareholder or individual as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes if more than an insubstantial part of its activities serve private interests.

Section 513 of the Internal Revenue Code states that "[t]he term 'unrelated trade or business' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 ..., except that such term does not include any trade or business (1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or (2) which is carried on, in the case of an organization described in section 501(c)(3), ... primarily for the convenience of its members, students, patients, officers, or employees...; or (3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions."

Section 502(a) of the Internal Revenue Code states that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Revenue Ruling 73-164, 1973-1 C.B. 223 holds that if an organization's principal income-producing activity is the conduct of trade or business and it has no significant charitable activity other than the required payment of all its profits over to one or more charitable organizations exempt under IRC section 501(c)(3), the organization is operated for the "primary purpose" of carrying on a trade or business for profit within the meaning of IRC section 502.

Revenue Ruling 57-52, 1957-1 C.B. 196 holds that an organization whose only activity is a business ordinarily carried on for profit is not exempt under IRC section 501(c)(3) merely because all of its profits are payable to a public body or government instrumentality for exclusively public purposes.

This organization falls within the scope of a "feeder" organization as described in IRC section 502 in that the operation of a real estate brokerage and the provision of sales advertising are considered unrelated trades or businesses within the meaning of IRC section 513, and the organization is requesting tax exemption under IRC section 501(c)(3) on the basis that ~~100% of the~~ gross receipts from these activities will ultimately be donated to ~~the~~.

As the operation of said trade or business is the organization's self-described "primary" activity, such activity is considered to be regularly carried on. In addition, as such activity is not substantially related to an exempt purpose, compensation will be paid for the performance of work needed to carry on the activity, and the organization is not in the business of selling merchandise which has been donated, none of the exceptions to IRC section 513 apply to this organization.

Further, the fact that the organization's president is considered the organization's "~~officer~~" carries an implication of potential inurement given that the nature of real estate transactions involves the payment of commissions, or in other words, a share of earnings.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you will continue to be recognized as an organization subject to Federal income tax.

Contributions to your organization are not deductible by donors under section 170(c)(2).

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position.

If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."



Appeals submitted which do not contain all documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

*Steven T. Miller*

Steven T. Miller  
Director, Exempt Organizations

Enclosure: Publication 892

cc: [REDACTED]